

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Russell F. Cornelius
SSN XXX-XX-5323
Rhonda S. Cornelius
SSN XXX-XX-5346

CASE NO. 04-50928 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Aurora Loan Services (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on November 3, 2004, at 1:30 p.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 13, 2004. The case is now pending

in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$47,150.00, as evidenced by that certain mortgage deed dated December 13, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated December 13, 1999, executed by Rhonda S. Cornelius married to Russell F. Cornelius, recorded December 16, 1999, as Document No. 511361, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Itasca County, Minnesota and is legally described as follows to-wit:

Part of the Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Thirteen (13), Township Sixty-two (62) North of Range Twenty-two (22), West of the Fourth Principal Meridian, described as follows: Assuming that the West line of the NW 1/4 of the NW 1/4 to run due North and South and the South line of said Quarter Quarter to run due East and West and beginning at the Southwest corner of said Quarter Quarter; thence along the West line of said Quarter Quarter a distance of 468 feet to a point; thence South 70 degrees East, a distance of 730.95 feet to a point; thence East parallel to the South line of said Quarter Quarter, a distance of 318.36 feet to a point; thence South parallel to the West line of said Quarter Quarter, a distance of 218 feet more or less to the South line of said Quarter Quarter; thence West along the South line of said Quarter Quarter, a distance of 1005.23 feet to the point of beginning, Less the West 400 feet of the South 218 feet.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or

adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of September 24, 2004, Debtor is delinquent in the making of monthly payments as required for the months of December, 2003 through September, 2004, inclusive, in the amount of \$473.63 each and \$458.75 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$48,000.00 subject to Secured Creditor's mortgage in excess of \$51,877.55.

Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 24th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR

06/22/04 TUE 08:13 FAX 12183284348

ITASCA CO ABSTRACT

015

10-013-2210

511361

Registration Tax of \$ 108.56 paid
 ITASCA CO. NO. 38377
 E. D. Tischer, Auditor/Treasurer
Jay Laker Deputy

OFFICE OF THE COUNTY RECORDER
 ITASCA COUNTY, MINNESOTA

Doc. No. **A 511361**

Certified filed and recorded on
 12/16/1999 at 1:50 pm

Larry A. Unger, Itasca County Recorder
 by SV Deputy

(Space Above This Line For Notarizing Date)

State of Minnesota

AFTER RECORDING RETURN TO:

MORTGAGE

Columbia National Incorporated

Attn: Document Control

P.O. Box 3050, Columbia, MD 21045-6050

PHA Case No.

271-8224242-748

03966465

THIS MORTGAGE ("Security Instrument") is given on December 13, 1999
 The Mortgagor is Rhonda S Cornelius married to Russell P. Cornelius

("Borrower"). This Security Instrument is given to Columbia National Incorporated

which is organized and existing under the laws of State of Maryland, and
 whose address is P.O. Box 3050, Columbia, MD 21045-6050

("Lender"). Borrower owes Lender the principal sum of

Forty Seven Thousand One Hundred Fifty and 00/100

Dollars (U.S. \$47,150.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on January 1, 2030

and for interest at the yearly rate of

9.000 percent. This Security

Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
 extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph
 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

PHA Minnesota Mortgage - 4/96

4R(MIN) 8702

Page 1 of 3

(Initials)

VMP MORTGAGE FORMS - (800)821-7281

511361



arrowhead abstract

110380190 v4rmm

12/09/99

14:55:23

03966465

Rec. County of Itasca
 DEC 16 1999

EXHIBIT

08/22/04 TUE 08:13 FAX 12183264348

ITASCA CO ABSTRACT

018

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in Itasca County, Minnesota:

Borrower acknowledges that the sum so received from lender under the note secured by this instrument is, in whole, or in part, in purchase money of the property secured hereby.

which has the address of 11583 State Hwy 1, Cook
Minnesota 55723

(Street, City).

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

4R(MN) (8702)

Page 2 of 6

511361

initials: BFL PSC

v4rml

12/09/99

14:55:24

03966465

08/22/04 TUE 08:14 FAX 12183264348

ITASCA CO ABSTRACT

017

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider

☐ Planned Unit Development Rider

☐

Growing Equity Rider

☐

Graduated Payment Rider

☒

Other [specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

-Witness

Rhonda S. Cornelius (Seal)
Rhonda S Cornelius -Borrower

-Witness

Russell F. Cornelius (Seal)
Russell F. Cornelius, signing separately for
the sole purpose of waiving homestead rights

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

4R(MB) (8702)

Page 7 of 8

511361

v4rnn

12/09/99

14:55:24

03966465

08/22/04 TUE 08:14 FAX 12183264348

ITASCA CO ABSTRACT

018

STATE OF MINNESOTA,

St. Louis

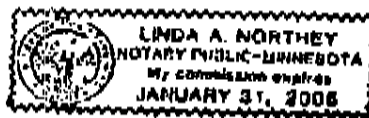
County as:

On this 13th day of December, 1999, before me appeared

Rhonda S. Cornelius married to Russell F. Cornelius and Russell F. Cornelius
married to Rhonda S. Cornelius

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that
they executed the same as their free act and deed.

My Commission Expires: 01/31/05
(Seal)



Notary Public

INITIAL

(RSC
RSC)

This instrument was prepared by
Columbia National Incorporated
P.O. Box 3050
Columbia, MD 21045-6050

511361

4P(AMN) (0703)

Page 2 of 2

v4rmm

12/09/99

14:55:24

03966465

08/22/04 TUE 08:14 FAX 12183284348

ITASCA CO ABSTRACT

019

Part of the Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Thirteen (13), Township Sixty-two (62) North of Range Twenty-two (22), West of the Fourth Principal Meridian, described as follows:

Assuming that the West line of the NW 1/4 of the NW 1/4 to run due North and South and the South line of said Quarter Quarter to run due East and West and beginning at the Southwest corner of said Quarter Quarter; thence North along the West line of said Quarter Quarter a distance of 468 feet to a point; thence South 70 degrees East, a distance of 730.95 feet to a point; thence East parallel to the South line of said Quarter Quarter, a distance of 318.36 feet to a point; thence South parallel to the West line of said Quarter Quarter, a distance of 218 feet more or less to the South line of said Quarter Quarter; thence West along the South line of said Quarter Quarter, a distance of 1005.23 feet to the point of beginning, Less the West 400 feet of the South 218 feet.

Property Address: 11583 State Hwy. 1, Cook, MN 55723

Being Abstract Property

Title Examiner: Rose Grady

Processor: dw

DEC 06 1999 09:42

218 749 4838

PAGE.02

INITIAL

RFC
RSC

511361

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Russell F. Cornelius
SSN XXX-XX-5323
Rhonda S. Cornelius
SSN XXX-XX-5346

CASE NO. 04-50928 GFK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 24, 2004, Debtor is delinquent for the monthly payments as required for the months of December, 2003 through September, 2004, in the amount of \$473.63 each and \$458.75 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$48,000.00 subject to Secured Creditor's mortgage in excess of \$51,877.55.

Since this is a liquidation case, no reorganization is being attempted.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 24th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

CASE NO. 04-50928 GFK

Russell F. Cornelius
SSN XXX-XX-5323
Rhonda S. Cornelius
SSN XXX-XX-5346

**AFFIDAVIT OF
MECHELLE ALLBAUGH**

Debtor.

Mechelle Allbaugh, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Aurora Loan Services.

2. Aurora Loan Services, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated December 13, 1999, executed by Rhonda S. Cornelius married to Russell F. Cornelius, recorded December 16, 1999, as Document No. 511361. The property is located in Itasca County, Minnesota and is legally described as follows, to-wit:

Part of the Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Thirteen (13), Township Sixty-two (62) North of Range Twenty-two (22), West of the Fourth Principal Meridian, described as follows: Assuming that the West line of the NW 1/4 of the NW 1/4 to run due North and South and the South line of said Quarter Quarter to run due East and West and beginning at the Southwest corner of said Quarter Quarter; thence along the West line of said Quarter Quarter a distance of 468 feet to a point; thence South 70 degrees East, a distance of 730.95 feet to a point; thence East parallel to the South line of said Quarter Quarter, a distance of 318.36 feet to a point; thence South parallel to the West line of said Quarter Quarter, a distance of 218 feet more or less to the South line of said Quarter Quarter; thence West along the South line of said Quarter Quarter, a distance of 1005.23 feet to the point of beginning, Less the West 400 feet of the South 218 feet.

3. That she has reviewed the account records relating to the Cornelius' mortgage loan, account no. 0111907754.

4. That as of September 10, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$45,741.46
Interest through September 10, 2004	3,541.61
Attorney's Fees:	700.00
Late Charges:	94.75
Non-Escrow Advances:	36.00
Escrow Balance:	119.65
Foreclosure Fees and Costs:	1,644.08
TOTAL:	\$51,877.55

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of December, 2003 through September, 2004 in the amount of \$473.63 each for the months of December, 2003 through July, 2004 and \$458.75 each for the months of August, 2004 through September, 2004.

6. This affidavit is given in support of the motion of Aurora Loan Services for relief from the automatic stay.

AURORA LOAN SERVICES

By Mechelle Allbaugh
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 15 day of September, 2004.

Brenda Fulk

Notary Public
9733.1



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Russell F. Cornelius
SSN XXX-XX-5323
Rhonda S. Cornelius
SSN XXX-XX-5346

CASE NO. 04-50928 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 24, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Mechelle Allbaugh, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Russell F. Cornelius
11583 State Hwy 1
Cook, MN 55723

Robert R. Kanuit
4815 W Arrowhead Rd Ste 230
Hermantown, MN 55811

Rhonda S. Cornelius
416 5th St SW
Chisholm, MN 55719

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Peter C. Greenlee
Greenlee Law Office
PO Box 1067
Twig, MN 55791

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 24th day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: _____

CHAPTER 7 CASE

Russell F. Cornelius
SSN XXX-XX-5323
Rhonda S. Cornelius
SSN XXX-XX-5346

CASE NO. 04-50928 GFK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Aurora Loan Services (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 3, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated December 13, 1999, executed by Rhonda S. Cornelius married to Russell F. Cornelius, recorded December 16, 1999, as Document No. 511361 covering real estate located in Itasca County, Minnesota, legally described as follows, to-wit:

Part of the Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Thirteen (13), Township Sixty-two (62) North of Range Twenty-two (22), West of the Fourth Principal Meridian, described as follows: Assuming that the West line of the NW 1/4 of the NW 1/4 to run due North and South and the South line of said Quarter Quarter to run due East and West and beginning at the Southwest corner of said Quarter Quarter; thence along the West line of said Quarter Quarter a distance of 468 feet to a point; thence South 70 degrees East, a distance of 730.95 feet to a point; thence East parallel to the South line of said Quarter Quarter, a distance of 318.36 feet to a point; thence South parallel to the West line of said Quarter Quarter, a distance of 218 feet more or less to the South line of said Quarter Quarter; thence West along the South line of said Quarter Quarter, a distance of 1005.23 feet to the point of beginning, Less the West 400 feet of the South 218 feet

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court